THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ARNOLD H. ZLOTNIK, JOHN A. AUSTIN and MILTON ZLOTNIK

Appeal No. 1999-1816
Application No. 08/370,540[1]

ON BRIEF

Before STAAB, NASE, and BAHR, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 8, 10, 16, 24 and 30 to 43. Claim 44 has been allowed. Claims 11 to 15, 17, 18 and 25 have been withdrawn from consideration under 37 CFR § 1.142(b) as being drawn to a nonelected invention. Claims 9, 19 to 23, 26, 27 and 29 have been canceled. Since no rejection of dependent

[1] Application for patent filed January 9, 1995.

claim 28 has been set forth in the answer (Paper No. 19, mailed November 9, 1998), we assume that claim 28 is objected to as depending from a non-allowed claim.

We AFFIRM-IN-PART.

BACKGROUND

The appellants' invention relates to a frame assembly for a deodorant cabinet. An understanding of the invention can be derived from a reading of exemplary claims 1, 2 and 42, which appears in the appendix to the appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Zlotnik et al. (Zlotnik)	4,931,258	June 5, 1990
Tisbo et al. (Tisbo)	5,372,415	Dec. 13, 1994

Claims 1 to 8, 10, 16, 24 and 30 to 43 stand rejected under 35 U.S.C. § 103 as being unpatentable over Zlotnik in view of Tisbo.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the answer for the examiner's complete reasoning in support of the rejection, and to the brief (Paper No. 18, filed August 26, 1998) and reply brief (Paper No. 20, filed January 8, 1999) for the appellants' arguments thereagainst.[2]

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the

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[2] Since the other ground of rejection set forth in the final rejection (Paper No. 13, mailed March 31, 1998) was not set forth in the examiner's answer we assume that this other ground of rejection has been withdrawn by the examiner. See Ex parte Emm, 118 USPQ 180, 181 (Bd. App. 1957).

examiner. As a consequence of our review, we make the determinations which follow.

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). Moreover, in evaluating such references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

With this as background, we analyze the prior art applied by the examiner in the rejection of the claims on appeal.

Zlotnik discloses a vandal-proof and theft-resistant deodorant cabinet for use in public facilities and restrooms. As shown in Figures 1-5, a housing 1 of the deodorant cabinet is specifically designed to be removably attached to a frame 3

of the cabinet with a series of lock tabs 10, 11, 12 which are inaccessible such that the housing can only be opened by someone with a special tool. Zlotnik teaches (column 1, lines 56-68) that

> Preferably the frame is generally C-shaped having an integrally formed back plate, top plate and bottom plate. The lock tabs are mounted on the top and bottom plates and also on the inner surfaces of the housing near its back edge. The lock tabs on the top and bottom plates engage the lock tabs on the inner surfaces of the housing to prevent the housing from being pulled forward and removed. Only by depressing the front tip of both the top plate and the bottom plate, preferably with a special tool, can the lock tabs on both plates be shifted to permit the lock tabs on the housing to be disengaged, thereby permitting housing to be removed completely.

In addition, Zlotnik discloses (column 2, lines 49-52) that frame 3 (including its back plate 13, top plate 14 and bottom plate 15) can be constructed of any kind of durable, flexible and tamper-resistant material and that polypropylene is a good example of such a material. Zlotnik further teaches (column 3, line 64, to column 4, line 6) that

> The upper surface of the bottom plate 15 is adapted to slidably receive a base tray 16 which preferably contains the deodorant. This permits the spent deodorant to be replaced very easily. The base tray 16 is multifunctional and can accept liquid deodorant canisters, square porous membrane deodorant bars or hardened cylindrical deodorant discs.

Tisbo discloses a storage locker constructed of recyclable thermoplastic that utilizes insertion tabs and sockets molded into the sides, top, bottom, front and side panels for
permanent interlocking without the need of conventional fasteners. As shown in Figure 2, assembly of a basic locker requires snap attachment of side walls 18, 24 to top end panel 20 and bottom end panel 26. Top end panel 20 and bottom end panel 26 are provided with insertion tabs 46, 46'. Side walls 18, 24 are provided with socket receptacles 50. The storage locker is assembled by inserting the tabs of the top end panel 20 and bottom end panel 26 into the socket receptacles of the side walls 18, 24.

As shown in Figure 4 of Tisbo, the insertion tabs 46, 46' include an alignment rail 110 having an angular top section 112 and reinforced lower section 114. A projection spar 116 forms the basis of the insertion tab comprising an upwardly projecting finger having a sloped top portion 118 leading to

latching hook surface 120 which will engage the socket receptacle. A lower portion 122 of the spar 116 permits deflection away from alignment rail 110 during assembly. Working as a seal and alignment means, a slot 124 is placed along the outer edge of the insertion tab for engaging an alignment boss 134 of the socket receptacle.

As shown in Figure 5 of Tisbo, the socket receptacles include molded projections 126 extending outwardly from edge 128 to a biasing tip 130. The angularly reinforced molded projections 126 encompass an aperture 132 sized to accommodate the projection spar 116 and more importantly, the latching hook surface 120 of a spar. Alignment boss 134 projects outwardly from upper edge 128 at a predetermined distance from side edge 136.

Figure 6 of Tisbo provides a cross sectional side view of the assembled coupling depicted in Figures 4 and 5. During assembly the biasing tip 130 of the molded projection 126 engages the angular top section of alignment rail 110 causing a deflection of top section 112 and projection spar 116 by use

of slope portion 118. Upon full insertion, the latching hook surface 120 of the projection spar 116 fits within the aperture 132 of the socket receptacle on molded projection 128 permanently locking the projection spar 116 in a fixed position. The biasing tip 130 maintains the molded projection 126 firmly against projection spar 116. Similarly, the reinforced lower portion 122 of the spar 116 permits deflection only during assembly and remains fixed in its upright position to prevent disengagement of the latching hook surface 120 from the aperture 132. Alignment boss 134 fits within slot 124 forming a tongue and groove assembly preventing access to the now locked components with the latching means hidden from external view.

After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

Claims 1 and 2

Based on our analysis and review of Zlotnik and claims 1 and 2, it is our opinion that the only differences are the limitations that (1) the back plate, top member and bottom member are separately constructed (claim 1) or separate components (claim 2), (2) cooperative flexible interlocking means for joining the back plate and top member, and (3) cooperative flexible interlocking means for joining the back plate and bottom member.

In applying the above-noted test for obviousness, we conclude that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed Zlotnik's frame 3 from three separate components (i.e., a back plate, a top plate/member and a bottom plate/member) and to have provided cooperative flexible interlocking means for joining the back plate to both the top plate/member and bottom plate/member in view of the teachings of Tisbo. In our view, the motivation for this modification of Zlotnik comes not from impermissible hindsight but from the prior art teachings of two well-known alternatives of construction of a

generally C-shaped frame. That is, Zlotnik teaches that it is well-known to integrally form a generally C-shaped frame, while Tisbo teaches that it is also well-known to interlock three components together to form a generally C-shaped frame. It is our view that an artisan[3] would have found it obvious at the time the invention was made to have replaced an integrally formed generally C-shaped frame with three components interlocked together to form the generally C-shaped frame.

The appellants argue that the subject matter of claims 1 and 2 is not suggested by the applied prior art. We disagree for the reasons set forth above.

In addition, the appellants argue that the claims recite that the members are of "substantial thickness" and that the

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[3] We observe that an artisan is presumed to know something about the art apart from what the references disclose (see In re Jacoby, 309 F.2d 513, 516, 135 USPQ 317, 319 (CCPA 1962)) and the conclusion of obviousness may be made from "common knowledge and common sense" of the person of ordinary skill in the art (see In re Bozek, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969)). Moreover, skill is presumed on the part of those practicing in the art. See In re Sovish, 769 F.2d 738, 743, 226 USPQ 771, 774 (Fed. Cir. 1985).

joints of Zlotnik are of small thickness. We agree with the examiner that the combined teachings of Zlotnik and Tisbo would have suggested that the three separate components that form the frame have "substantial thickness" and thus providing rigid joints between the components.

For the reasons stated above, the decision of the examiner to reject claims 1 and 2 under 35 U.S.C. § 103 is affirmed.

Claims 3, 5 to 8, 31 and 33 to 38

Claims 3, 6 and 36 and the claims dependent thereon (i.e., claims 5, 7, 8, 31, 33 to 35, 37 and 38) recite that one of the interlocking means include a ramp means formed on the back plate and a locking tab means formed on the top or bottom member. Claims 3, 6 and 36 further recite that the tab means is adapted to be moved into engagement with the ramp means by movement of the top or bottom member generally transverse to the back plate until the tab means having been compressed by the movement, disengages the ramp means.

The examiner determined (answer, p. 4) that

> [w]hile the tab/ramp arrangement of Tisbo et al. is opposite the claimed arrangement (i.e., the ramps are on the top and bottom members while the tabs are on the back member) such an arrangement represents an obvious reversal of parts providing no added advantage or purpose. Moreover, while Tisbo et al. shows compression of the ramp member rather than the tab member as claimed, to reverse the arrangement such that tab deflects rather than the ramps would have been an obvious functionally equivalent arrangement.

The appellants argue that the subject matter of claims 3, 6 and 36 is not taught or suggested by the applied prior art. We agree. While we agree with the examiner that it would have been obvious to reverse the position of Tisbo's insertion tabs and socket receptacles, we see no reason absent the use of impermissible hindsight[4], to have made the projection 126 of Tisbo compress upon insertion of the insertion tabs into the

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[4] In our view, the only suggestion for modifying the applied prior art in the manner proposed by the examiner to meet the above-noted limitations stems from hindsight knowledge derived from the appellants' own disclosure. The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

socket receptacles. In that regard, while the claimed "ramp means" is readable on Tisbo's sloped portion 118 which guides projection 126, there is no evidence[5] in the applied prior art which would have suggested redesigning Tisbo's projection spar 116 so that it does not deflect while redesigning projection 126 so that it does deflect (i.e., compress).

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[5] Evidence of a suggestion, teaching, or motivation to modify a reference may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved, see Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc., 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996), Para-Ordinance Mfg. v. SGS Imports Intern., Inc., 73 F.3d 1085, 1088, 37 USPQ2d 1237, 1240 (Fed. Cir. 1995), although "the suggestion more often comes from the teachings of the pertinent references," In re Rouffet, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1456 (Fed. Cir. 1998). The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular. See, e.g., C.R. Bard, Inc. v. M3 Sys., Inc., 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998). A broad conclusory statement regarding the obviousness of modifying a reference, standing alone, is not "evidence." E.g., McElmurry v. Arkansas Power & Light Co., 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993); In re Sichert, 566 F.2d 1154, 1164, 196 USPQ 209, 217 (CCPA 1977). See also In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

For the reasons stated above, the decision of the examiner to reject claims 3, 5 to 8, 31 and 33 to 38 under 35 U.S.C. § 103 is reversed.

Claims 4, 10, 24, 30, 32, 40, 41 and 43

The decision of the examiner to reject claims 4, 10, 24, 30, 32, 40, 41 and 43 under 35 U.S.C. § 103 is also affirmed since the appellants have not challenged this rejection with any reasonable specificity, thereby allowing claims 4, 10, 24, 30, 32, 40, 41 and 43 to fall with claims 1 and 2 (see In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987).

Claim 16

The appellants argue that claim 16 is patentable since it recites that the bottom member is a tray and since Zlotnik's

bottom member (i.e., bottom plate 15) is an open plate adapted to slidably receive a tray 16. We do not agree for the following reasons.

First, it is our opinion that the term "tray" is readable on Zlotnik's bottom plate 15. It is axiomatic that, in proceedings before the PTO, terms used in a claim are to be given their broadest reasonable interpretation consistent with the specification, and that claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. See In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). Moreover, limitations are not to be read into the claims from the specification. In re Van Geuns, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993) citing In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). Webster's Third New International Dictionary, (1971) defines "tray" as "a flat, shallow receptacle with a raised edge or rim, used for carrying, holding, or displaying articles." For the reasons stated previously, the combined teachings of the applied prior art would have suggested making Zlotnik's bottom

plate 15 as a separate component. When Zlotnik's bottom plate 15 is viewed as a separate component, the term "tray" is readable on Zlotnik's bottom plate 15 since the bottom plate 15, as shown in Figure 5) is a flat, shallow receptacle with a raised edge, used for carrying or holding an article (i.e., base tray 16).

Second, for the reasons stated previously, the combined teachings of the applied prior art would have suggested making Zlotnik's bottom plate 15 as a separate component. When Zlotnik's bottom plate 15 is viewed as a separate component, it is our opinion that it would have been further obvious to one of ordinary skill in the art at the time the invention was made to have integrally formed the bottom plate and base tray 16.

For the reasons stated above, the decision of the examiner to reject claim 16 under 35 U.S.C. § 103 is affirmed.

Claims 39 and 42

The appellants argue that claims 39 and 42 cannot be read on the applied prior art. We do not agree for the following reasons.

As stated previously, we agree with the examiner that it would have been obvious to reverse the position of Tisbo's insertion tabs and socket receptacles. Accordingly, Tisbo's ramp means (i.e., sloped portion 118) and associated slot means (i.e., the space between alignment rail 112 and projection spar 116) would have been on the back plate and Tisbo's tab means (i.e, projection 126) and projection (i.e., tip 130) would have been on the top and bottom members. Thus, Tisbo's projection (i.e., tip 130) engages the slot means (i.e., the space between alignment rail 112 and projection spar 116) when the tab means (i.e, projection 126) engages the ramp means (i.e., sloped portion 118) as recited in claims 39 and 42.

Since all the limitations of claims 39 and 42 are suggested by the applied prior art for the reasons stated

above, the decision of the examiner to reject claims 39 and 42 under 35 U.S.C. § 103 is affirmed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 8, 10, 16, 24 and 30 to 43 under 35 U.S.C. § 103 is affirmed with respect to claims 1, 2, 4, 10, 16, 24, 30, 32 and 39 to 43 and reversed with respect to claims 3, 5 to 8, 31 and 33 to 38.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

LAWRENCE J. STAAB Administrative Patent Judge	)
JEFFREY V. NASE Administrative Patent Judge	) BOARD OF PATENT APPEALS AND INTERFERENCES
JENNIFER D. BAHR Administrative Patent Judge	)

HYMEN DIAMOND
4409 RUTH DRIVE
MONROEVILLE, PA 15146

APPEAL NO. 1999-1816 - JUDGE NASE
APPLICATION NO. 08/370,540

APJ NASE

APJ BAHR

APJ STAAB

DECISION: **AFFIRMED-IN-PART**

Prepared By: Gloria Henderson

DRAFT TYPED: 04 Oct 99

FINAL TYPED: